

ASSEMBLY BILL

No. 1288

Introduced by Assembly Member Chu

February 22, 2005

An act to amend Sections 136.2 and 11106 of the Penal Code, relating to court orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, as introduced, Chu. Court orders.

(1) Existing law provides a mechanism whereby the court may issue a protective order.

This bill would require a court, under specified circumstances, to issue a protective order to a defendant charged with domestic violence that would require, among other things, the relinquishment of his or her firearms. A failure to comply with the provisions of that protective order would result in a misdemeanor.

By adding to the duties of local employees, this bill would impose a state-mandated local program. By imposing a crime for a violation of the above-described protective order, the bill would create a state-mandated local program.

(2) Existing law requires the Attorney General to maintain a registry of information reported to the Department of Justice regarding firearms, including, among other things, copies of licenses to carry firearms and applications for licenses to carry firearms. Existing law provides generally that information contained in the registry shall, upon proper application, be furnished to specified peace officers. However, information relating to firearms that are not handguns shall not generally be retained but shall instead be destroyed, as specified; a violation of this provision is a misdemeanor.

This bill would, as an exception to the above provisions, authorize specified peace officers to whom dealers' records of sales of firearms are furnished to disseminate a record, or information obtained from a record, relating to a particular sale of a firearm, if the purchaser has been arraigned for domestic violence or is the subject of an emergency protective order, a temporary restraining order, or an order after hearing issued by a family court under the Domestic Violence Protect Act and the record or information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 136.2 of the Penal Code is amended to
- 2 read:
- 3 136.2. Upon a good cause belief that harm to, or intimidation
- 4 or dissuasion of, a victim or witness has occurred or is
- 5 reasonably likely to occur, any court with jurisdiction over a
- 6 criminal matter may issue orders including, but not limited to, the
- 7 following:
- 8 (a) Any order issued pursuant to Section 6320 of the Family
- 9 Code.
- 10 (b) An order that a defendant shall not violate any provision of
- 11 Section 136.1.
- 12 (c) An order that a person before the court other than a
- 13 defendant, including, but not limited to, a subpoenaed witness or

1 other person entering the courtroom of the court, shall not violate
2 any provisions of Section 136.1.

3 (d) An order that any person described in this section shall
4 have no communication whatsoever with any specified witness
5 or any victim, except through an attorney under any reasonable
6 restrictions that the court may impose.

7 (e) An order calling for a hearing to determine if an order as
8 described in subdivisions (a) to (d), inclusive, should be issued.

9 (f) An order that a particular law enforcement agency within
10 the jurisdiction of the court provide protection for a victim or a
11 witness, or both, or for immediate family members of a victim or
12 a witness who reside in the same household as the victim or
13 witness or within reasonable proximity of the victim's or
14 witness' household, as determined by the court. The order shall
15 not be made without the consent of the law enforcement agency
16 except for limited and specified periods of time and upon an
17 express finding by the court of a clear and present danger of
18 harm to the victim or witness or immediate family members of
19 the victim or witness.

20 For purposes of this subdivision, "immediate family members"
21 include the spouse, children, or parents of the victim or witness.

22 (g) (1) Any order protecting victims of violent crime from *all*
23 *contact by the defendant, or* contact, with the intent to annoy,
24 harass, threaten, or commit acts of violence, by the defendant.
25 The court or its designee shall transmit orders made under this
26 subdivision to law enforcement personnel within one business
27 day of the issuance, modification, extension, or termination of
28 the order, pursuant to subdivision (a) of Section 6380 of the
29 Family Code. It is the responsibility of the court to transmit the
30 modification, extension, or termination orders made under this
31 subdivision to the same agency that entered the original
32 protective order into the Domestic Violence Restraining Order
33 System.

34 (2) (A) *If a court does not issue an order pursuant to*
35 *paragraph (1) in a case in which the defendant is charged with a*
36 *crime of domestic violence as defined in Section 13700, the court*
37 *on its own motion shall issue a protective order upon a good*
38 *cause belief that harm to, or intimidation or dissuasion of, a*
39 *victim or witness has occurred or is reasonably likely to occur,*
40 *that provides as follows:*

1 (i) *The defendant shall not own, possess, purchase, receive, or*
2 *attempt to purchase or receive, a firearm while the protective*
3 *order is in effect.*

4 (ii) *The defendant shall relinquish any firearms that he or she*
5 *owns or possesses pursuant to Section 527.9 of the Code of Civil*
6 *Procedure.*

7 (B) *Every person who owns, possesses, purchases, or receives,*
8 *or attempts to purchase or receive, a firearm while this*
9 *protective order is in effect is punishable pursuant to subdivision*
10 *(g) of Section 12021.*

11 (3) Any order issued, modified, extended, or terminated by a
12 court pursuant to this subdivision shall be issued on forms
13 adopted by the Judicial Council of California and that have been
14 approved by the Department of Justice pursuant to subdivision (i)
15 of Section 6380 of the Family Code. However, the fact that an
16 order issued by a court pursuant to this section was not issued on
17 forms adopted by the Judicial Council and approved by the
18 Department of Justice shall not, in and of itself, make the order
19 unenforceable.

20 (4) Any person violating any order made pursuant to
21 subdivisions (a) to (g), inclusive, may be punished for any
22 substantive offense described in Section 136.1, or for a contempt
23 of the court making the order. A finding of contempt shall not be
24 a bar to prosecution for a violation of Section 136.1. However,
25 any person so held in contempt shall be entitled to credit for any
26 punishment imposed therein against any sentence imposed upon
27 conviction of an offense described in Section 136.1. Any
28 conviction or acquittal for any substantive offense under Section
29 136.1 shall be a bar to a subsequent punishment for contempt
30 arising out of the same act.

31 (h) (1) A person subject to a protective order issued under this
32 section shall not own, possess, purchase, receive, or attempt to
33 purchase or receive a firearm while the protective order is in
34 effect.

35 (2) The court shall order a person subject to a protective order
36 issued under this section to relinquish any firearms he or she
37 owns or possesses pursuant to Section 527.9 of the Code of Civil
38 Procedure.

39 (3) Every person who owns, possesses, purchases or receives,
40 or attempts to purchase or receive a firearm while the protective

1 order is in effect is punishable pursuant to subdivision (g) of
2 Section 12021 of the Penal Code.

3 (i) (1) In all cases where the defendant is charged with a
4 crime of domestic violence, as defined in Section 13700, the
5 court shall consider issuing the above-described orders on its
6 own motion. All interested parties shall receive a copy of those
7 orders. In order to facilitate this, the court's records of all
8 criminal cases involving domestic violence shall be marked to
9 clearly alert the court to this issue. *In any case in which a court*
10 *orders that the protective order be terminated, the district*
11 *attorney or city attorney shall notify the victim of the order 30*
12 *days before the termination takes effect.*

13 (2) In those cases in which a complaint, information, or
14 indictment charging a crime of domestic violence, as defined in
15 Section 13700, has been issued, a restraining order or protective
16 order against the defendant issued by the criminal court in that
17 case has precedence in enforcement over any civil court order
18 against the defendant.

19 (3) Custody and visitation with respect to the defendant and
20 his or her minor children may be ordered by a family or juvenile
21 court consistent with the protocol established pursuant to
22 subdivision (i).

23 (j) On or before January 1, 2003, the Judicial Council shall
24 promulgate a protocol, for adoption by each local court in
25 substantially similar terms, to provide for the timely coordination
26 of all orders against the same defendant and in favor of the same
27 named victim or victims. The protocol shall include, but shall not
28 be limited to, mechanisms for assuring appropriate
29 communication and information sharing between criminal,
30 family, and juvenile courts concerning orders and cases that
31 involve the same parties, and shall permit a family or juvenile
32 court order to coexist with a criminal court protective order
33 subject to the following conditions:

34 (1) Any order that permits contact between the restrained
35 person and his or her children shall provide for the safe exchange
36 of the children and shall not contain language either printed or
37 handwritten that violates a "no contact order" issued by a
38 criminal court.

39 (2) Safety of all parties shall be the courts' paramount
40 concern. The family or juvenile court shall specify the time, day,

1 place, and manner of transfer of the child, as provided in Section
2 3100 of the Family Code.

3 (k) On or before January 1, 2003, the Judicial Council shall
4 modify the criminal and civil court protective order forms
5 consistent with this section.

6 SEC. 2. Section 11106 of the Penal Code is amended to read:

7 11106. (a) (1) In order to assist in the investigation of crime,
8 the prosecution of civil actions by city attorneys pursuant to
9 paragraph (3) of subdivision (c), the arrest and prosecution of
10 criminals, and the recovery of lost, stolen, or found property, the
11 Attorney General shall keep and properly file a complete record
12 of all copies of fingerprints, copies of licenses to carry firearms
13 issued pursuant to Section 12050, information reported to the
14 Department of Justice pursuant to Section 12053, dealers'
15 records of sales of firearms, reports provided pursuant to Section
16 12072 or 12078, forms provided pursuant to Section 12084,
17 reports provided pursuant to Section 12071 that are not dealers'
18 records of sales of firearms, and reports of stolen, lost, found,
19 pledged, or pawned property in any city or county of this state,
20 and shall, upon proper application therefor, furnish this
21 information to the officers referred to in Section 11105.

22 (2) (A) *Any officer referred to in paragraphs (1) to (6),*
23 *inclusive, of subdivision (b) of Section 11105, to whom dealers'*
24 *records of sales of firearms are furnished, may disseminate a*
25 *record, or information obtained from a record, relating to a*
26 *particular sale if the following conditions are met:*

27 (i) *The purchaser has been arraigned for a crime in which the*
28 *victim is a person described in subdivisions (a) to (f), inclusive,*
29 *of Section 6211 of the Family Code, or the purchaser is the*
30 *subject of an emergency protective order, a temporary*
31 *restraining order, or an order after hearing issued by a family*
32 *court under the Domestic Violence Protection Act set forth in*
33 *Article 1 (commencing with Section 6320) of Chapter 2 of Part 4*
34 *of Division 10 of the Family Code.*

35 (ii) *The record or information is disseminated only to the*
36 *victim of the crime or to the person who has obtained the*
37 *emergency protective order, the temporary restraining order, or*
38 *the order after hearing issued by the family court.*

1 *(B) The victim or person to whom such a record or*
2 *information is disseminated may disclose it as he or she deems*
3 *necessary to protect himself or herself or another person at risk.*

4 (b) (1) ~~Notwithstanding~~ Except as provided in paragraph (2)
5 of subdivision (a), the Attorney General shall not retain or
6 compile any information from reports filed pursuant to
7 subdivision (a) of Section 12078 for firearms that are not
8 handguns, from forms submitted pursuant to Section 12084 for
9 firearms that are not handguns, or from dealers' records of sales
10 for firearms that are not handguns. All copies of the forms
11 submitted, or any information received in electronic form,
12 pursuant to Section 12084 for firearms that are not handguns, or
13 of the dealers' records of sales for firearms that are not handguns
14 shall be destroyed within five days of the clearance by the
15 Attorney General, unless the purchaser or transferor is ineligible
16 to take possession of the firearm. All copies of the reports filed,
17 or any information received in electronic form, pursuant to
18 subdivision (a) of Section 12078 for firearms that are not
19 handguns shall be destroyed within five days of the receipt by the
20 Attorney General, unless retention is necessary for use in a
21 criminal prosecution.

22 (2) A peace officer, the Attorney General, a Department of
23 Justice employee designated by the Attorney General, or any
24 authorized local law enforcement employee shall not retain or
25 compile any information from a firearms transaction record, as
26 defined in paragraph (5) of subdivision (c) of Section 12071, for
27 firearms that are not handguns unless retention or compilation is
28 necessary for use in a criminal prosecution or in a proceeding to
29 revoke a license issued pursuant to Section 12071.

30 (3) A violation of this subdivision is a misdemeanor.

31 (c) (1) The Attorney General shall permanently keep and
32 properly file and maintain all information reported to the
33 Department of Justice pursuant to Sections 12071, 12072, 12078,
34 12082, and 12084 or any other law, as to handguns and maintain
35 a registry thereof.

36 (2) The registry shall consist of all of the following:

37 (A) The name, address, identification of, place of birth (state
38 or country), complete telephone number, occupation, sex,
39 description, and all legal names and aliases ever used by the
40 owner or person being loaned the particular handgun as listed on

1 the information provided to the department on the Dealers'
2 Record of Sale, the Law Enforcement Firearms Transfer (LEFT),
3 as defined in Section 12084, or reports made to the department
4 pursuant to Section 12078 or any other law.

5 (B) The name and address of, and other information about, any
6 person (whether a dealer or a private party) from whom the
7 owner acquired or the person being loaned the particular handgun
8 and when the firearm was acquired or loaned as listed on the
9 information provided to the department on the Dealers' Record
10 of Sale, the LEFT, or reports made to the department pursuant to
11 Section 12078 or any other law.

12 (C) Any waiting period exemption applicable to the
13 transaction which resulted in the owner of or the person being
14 loaned the particular handgun acquiring or being loaned that
15 firearm.

16 (D) The manufacturer's name if stamped on the firearm,
17 model name or number if stamped on the firearm, and, if
18 applicable, the serial number, other number (if more than one
19 serial number is stamped on the firearm), caliber, type of firearm,
20 if the firearm is new or used, barrel length, and color of the
21 firearm.

22 (3) Information in the registry referred to in this subdivision
23 shall, upon proper application therefor, be furnished to the
24 officers referred to in Section 11105, to a city attorney
25 prosecuting a civil action, solely for use in prosecuting that civil
26 action and not for any other purpose, or to the person listed in the
27 registry as the owner or person who is listed as being loaned the
28 particular handgun.

29 (4) If any person is listed in the registry as the owner of a
30 firearm through a Dealers' Record of Sale prior to 1979, and the
31 person listed in the registry requests by letter that the Attorney
32 General store and keep the record electronically, as well as in the
33 record's existing photographic, photostatic, or nonerasable
34 optically stored form, the Attorney General shall do so within
35 three working days of receipt of the request. The Attorney
36 General shall, in writing, and as soon as practicable, notify the
37 person requesting electronic storage of the record that the request
38 has been honored as required by this paragraph.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution for

1 certain costs that may be incurred by a local agency or school
2 district because, in that regard, this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the
4 penalty for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition of a
6 crime within the meaning of Section 6 of Article XIII B of the
7 California Constitution.

8 However, if the Commission on State Mandates determines
9 that this act contains other costs mandated by the state,
10 reimbursement to local agencies and school districts for those
11 costs shall be made pursuant to Part 7 (commencing with Section
12 17500) of Division 4 of Title 2 of the Government Code.

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